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Sometimes change comes naturally... like the seasons... in a rhythm that we can enjoy because we understand it. But other times, change comes for different reasons that we can't understand.

Mary George

MARKS ON THE GRASS

A book that takes a candid look at the problems—and the opportunities—involved in surrender, land-leasing and economic development on Indian reserves.

Disponible aussi en français

Canada Cement LaFarge distribution terminal on MacGregor Bay at the Whitefish Indian Reservation

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Surrender is a harsh word to an Indian because he feels he is losing his land.

Chief Bill Mitchell
Sliammon Band, Powell River,
British Columbia

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Chief Bill Mitchell's comment about the meaning of surrender represents the opinion of many Indians who live on reserves across Canada. It is not surprising. In the past, some bands which have surrendered part of their reserves have been taken advantage of—unconsciously or deliberately—with inadequate leasing arrangements. The process of land surrender for leasing is complicated and difficult to understand; it requires a lot of consideration and lengthy negotitations with various government offices. Even those who deal with land surrender agreements on a regular basis find it both challenging and complicated. Small wonder that those who become involved in the process for the first time are confused and concerned.

In such circumstances it is easy to appreciate why many bands see it as a hopelessly complicated procedure and conclude that it is hardly worth the trouble.

Let us be frank: economic development on Indian reserve land *can* cause problems, plenty of problems. But it can also produce some positive opportunities for the band and its members. Successful developments can mean new job opportunities and new income. But it can mean more than money alone; it can mean the opportunity to develop new skills and it can produce a situation in which new confidence develops and new independence flourishes.

Today, in Canada, a great many acres of Indian reserve land have been surrendered and leased for business development; with direct benefit to individual Indians and Indian enterprises.

This book has been written specifically for people who want to know more about using reserve land for economic development. In it we show how three different bands, from widely scattered locations, have used parts of their lands to launch business ventures. It also outlines the precautions a band should take to safeguard its continuing control of the lands it leases.

The information is as current as possible, but readers are reminded that policies and regulations *are subject to change.**

In an attempt to make this book useful to as many people as possible, the information has been kept general. Within this restriction, the information should not be understood as applying to any specific situation other than those illustrated. The book's purpose will be served best if its contents are used as guidelines for group discussion. Specific answers to specific questions should be directed to legal counsel or to the Department of Indian Affairs.

It is not our purpose to argue for, or against, the use of reserve land for economic development. Rather, it is the book's function to provide background details that will help and stimulate group discussions.

It would not have been possible to produce this book without the advice and assistance of a great number of individuals and groups from one coast to the other. As has been said, three bands are identified within these pages but a score of others provided material on which it is based. To all who assisted we are grateful. In particular we acknowledge with gratitude the help provided by the National Indian Brotherhood; the Sliammon Band of Powell River, British Columbia; the Stoney Indians at Morley, Alberta; and the Whitefish River Band, Espanola (Birch Island), Ontario.

Department of Indian Affairs
Ottawa, Ontario.

* The information in this book on the subjects of land leasing, surrender and economic development applies, for the most part, to all provinces with the exception of Quebec where federal and provincial regulations differ from those in other provinces. Specific information on Indian reserve land use in Quebec may be obtained from The Department of Indian and Northern Affairs, Indian Eskimo Economic Development Branch, 400 Laurier Avenue West, Ottawa, Canada K1A 0H4.

This is really important...that the people understand what you are up to.

Chief Joe Mitchell

Chief Joe Mitchell
Sliammon Band, Powell River, British Columbia

The Coastal Salish Indians of British Columbia have a history of being a very resourceful people. They've had to be: they have lived mainly on the products of the sea and the sea is a fickle provider. The Sliammon Band at Powell River, some 150 miles north of Vancouver, has been particularly adaptable. For centuries the Sliammons have cruised the waters of the Queen Charlotte and Georgia Straits harvesting fish for food and for sale. They have known years of bounty and years of deprivation. They have *had* to adapt in order to survive.

Technological change, imposed upon the Sliammons from the outside, forced them to abandon fishing as their major economic endeavour. For the first time the band had to consider using its land—instead of the sea—as a means of providing a livelihood.

After much discussion, the Sliammons decided they could convert parts of their seacoast property to profitable uses. They surveyed one particularly scenic area into cottage lots and rented them to non-Indians who lived nearby. The money earned helped replace the money lost from the commercial fishing operation which had become too expensive to operate. The subdivision, known as Klahanie Estates, was the first real estate project undertaken by the Sliammons.

Before any work began the band had to approve the plan. A band council resolution called for a surrender referendum. The plan as submitted to the band members—and ultimately approved—involved a large number of lots of one and a quarter miles of water front property. Most of the lots are leased for a forty year term. All of the leases expire May 31st, 2012. Rental money is deposited in the band's revenue account. The lease agreements are "conditional" and are drawn up by the band's lawyer with clauses to protect control of the land.

When his lease expires a cottager can remove all of the building improvements made, provided: the cottager is not in default on his lease payments; has given written notice of intention to remove the improvements and has posted a bond with the Lessor assuring him that the grounds will be left in a condition satisfactory to the band within 10 days of the expiry date.

Klahanie Estates has been more than just a project to produce new income. It's been a learning experience. Even though a majority of band members had been in favour of the surrender and lease, there had been many who were doubtful. The idea of non-Indians living on the reserve land troubled them. They were fearful that the use of the land would be lost to them forever. In some cases, the older generation felt that surrender and leasing meant that the band would lose its culture and its traditional way of life.

Chief Joe Mitchell recognized the problem for what it was: lack of understanding and poor communication. He faced the problem squarely. He made certain that every band member had the opportunity to attend regular meetings and to talk out his concerns. He picked a young man by the name of Larry Louie to be a go-between. Louie, wise in the ways of both the younger and the older generations, made sure that questions were answered quickly and accurately.

The money earned form the Klahanie lease grew in the band revenue account and soon the council began to look for another project that could be developed using this income as a financial base. The council felt that a new project should be planned to involve more band members directly, and to employ them in its operation. Once more after prolonged discussions, a plan took shape. The idea was to build and operate a drive-in theatre to attract audiences from

At the Sliammon Band's drive-in theatre, Gene Louie watches over two massive projectors

nearby Powell River. The plans called for the use of five acres of reserve land; money was to be borrowed against the income earned from the cottage lots. Additional funds from other sources were to be raised to operate the theatre until it achieved a profit position. The council recognized that this next step toward economic independence would involve more risk than the cottage lots.

Because risk was involved and because it was essential to protect individual band members from personal loss, the council decided to form a limited liability company called Sliammon Band Enterprises Limited. This step is routine in non-Indian communities, but it has a certain significance for Indians living on a reserve. In the eyes of the law it is a non-Indian entity—any profits are taxable. It's the price the Sliammons paid to minimize personal risk.

"We did a lot of talking among ourselves before we decided to form the company", says Gene Louie, a director of the firm and the theatre's general manager, "but finally we decided that's the way we'd do it. We figured that if the company had to pay taxes it would mean it was successful and that's all that mattered to us."

The band company was incorporated with the chief and three band councillors as directors and officers. They hold shares in *trust* for all the members of the band. A surrender referendum was held and the band agreed to surrender the land for twenty-five years and lease it for twenty.

Financing for the project was based on projections that the drive-in would have to operate for five years before it showed a profit. Using the income from the cottage lots as security, the band contracted a loan with the Bank of Montreal in Powell River. It was important to the band that the drive-in theatre should be developed independent of any resources from Indian Affairs.

Along the way there were lots of problems. To help solve them the company hired a non-Indian consultant—an expert in movie-house operations. He helped with the plans and the forecast; he supervised construction, trained a manager and projectionists, and advised the company on how to promote the theatre. According to Gene Louie, " Lionel Courchene was really important to us. He helped us avoid making a lot of mistakes because he knew the business so well."

The Sliammon Drive-In is now in full operation. Already it's earning a profit and it employs thirteen people from the reserve—people who have learned and are proud of their new skills. Because so many members are involved the whole band takes pride in the theatre's success. In three yearly meetings and by monthly bulletin, band members are kept up to date.

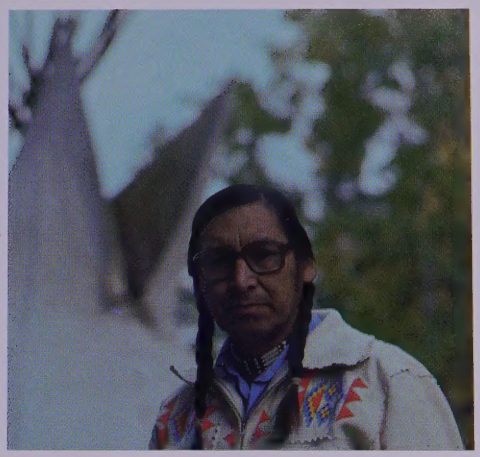
The Sliammon experience illustrates how the band deals with *change*. By making sure that the projects are controlled by the band, for the benefit of its members, the Sliammon people are moving to meet the needs of the Twentieth Century. They are also working hard to make sure that whatever project is undertaken, their culture is preserved.

A view of summer cottages at Klahanie Estates summer cottages on the Sliammon Reserve

Construction gets underway on a new band community centre

We should respect the earth and live with it in harmony.

Chief John Snow



Chief John Snow
Stoney Indian Reserve, Morley, Alberta

There are almost two thousand people living on the more than 78,000 acres of the Stoney Indian Reserve in Morley, Alberta. It's one of the most beautiful in Canada. Nestled in the foothills of the Rockies, the Stoney Reserve is much more than just spectacular landscape. It's an area where the preservation of the Indian culture is *the* most important part of the Indians' way of life.

Chief John Snow is one of four tribal leaders of the Stoneys. When he speaks, he speaks with a depth of wisdom and the weight of authority: "I feel that culture is very important to my people because if we lose our culture, we will become a forgotten people. If we lose our language, we will die as a people."

When the subject of economic development on Indian land is raised at Morley, the Stoneys consider it from only one point of view: "Will the project affect our culture?" If the project can be made to work *for* its culture, the band will consider the proposition. If it doesn't fit with the Stoney's lifestyle, it is rejected out of hand. For the Stoneys, all economic develpment must be centered around nature and the preservation of the environment. "These mountains are our temples", says Chief John Snow. His eloquence illustrates the abiding sense of communion the Indian feels for his land. It is not just a chattel that can be bought, sold, or traded; it is part of his spiritual way of life. That's why the two economic development projects at Morley are highly conditional.

The Stoney Wilderness Centre is a revealing illustration of the tribe's attitude: the centre's main purpose is to teach—mostly non-Indians, but people of other Indian tribes as well—about the Stoney way of life, the culture, the philosophy, the religion.

Campers come to the reserve from Calgary, from Edmonton, indeed from all across Canada and from Europe and the U.S.A., for twelve-day periods. During each session they learn about the wilderness. They live in tipis, learn to light fire with damp wood, are taught survival skills, and how to handle horses. Stoney women teach handicrafts and around campfires the band's elders recount ancient tales of Indian folklore.

For three of the twelve days, the campers ride out on horseback to the mountain wilderness where moose, bighorn sheep, and wild horses still range. The Stoney guides instruct each camper in the realities of nature—its beauties, its dangers. The idea is to give each paying camper a well-rounded wilderness adventure so that each will return home toughened by contact with an unforgiving nature, and more sensitive to the delicacy of the environment.

Financially, the first two years of the camp's operation were difficult. Because the project depends largely on the summer tourist trade, the length of the season is important but unpredictable. The shorter the season, the less time to make money. Still, the cost of maintaining the operation goes on the year around; horses have to be fed in winter as well as in summer.

The Stoneys have recognized this problem and are taking steps to adjust to it. The band is now moving the wilderness centre towards a year-round operation in the belief that survival skills can be taught as well in winter as in the summer.

The year-round operation will increase operating costs somewhat but it provides the opportunity to add attractions that will draw more paying customers. The Stoneys are interested in getting their share of the money to be made from the increasing involvement of Canadians with winter camping and outdoor activities.

Money for the development—and, to some extent, for the operation—of the wilderness centre came from a series of grants and guaranteed loans from the Indian Economic

Hector Lake, the Stoney Reserve base camp for the Stoney Wilderness Centre

Development Fund. At first the project was informally organized; as a need arose a band member was delegated to look after it. There was no on-going organization, and nothing like contracts, leases or agreements. Today, however, the organization is more formal, more controlled.

There is a second business venture at Morley; one that, from the beginning, has been formalized and binding in a legal sense. It had to be because it involves non-Indian use of the land. Wildlife Unlimited is a game farm that rents a portion of Stoney land to display an extensive variety of wild animals in their natural habitats.

When Mickey Bailey first came to the Stoney Tribal Council with his proposition the members listened with interest. He wanted to lease land and develop a sanctuary for wild animals, some of them endangered species. His design for the sanctuary was unique—the visitors, the humans, would be fenced in and the animals would roam as free as possible, consistent with safety for both animal and human.

Recalling his reaction to Bailey's proposition Chief Snow says, "Our feeling was that we'd have a haven here for the North American animals on this game farm. They'll be right here, on the reserve. So, in that sense, we were readily prepared to allow the land to be used." To the Indians' way of thinking, the farm represented conservation and symbolized protection of the environment. While it accomplished these ends, it would also generate income for the band. For all those reasons, the Stoneys agreed to negotiate a lease with Bailey.

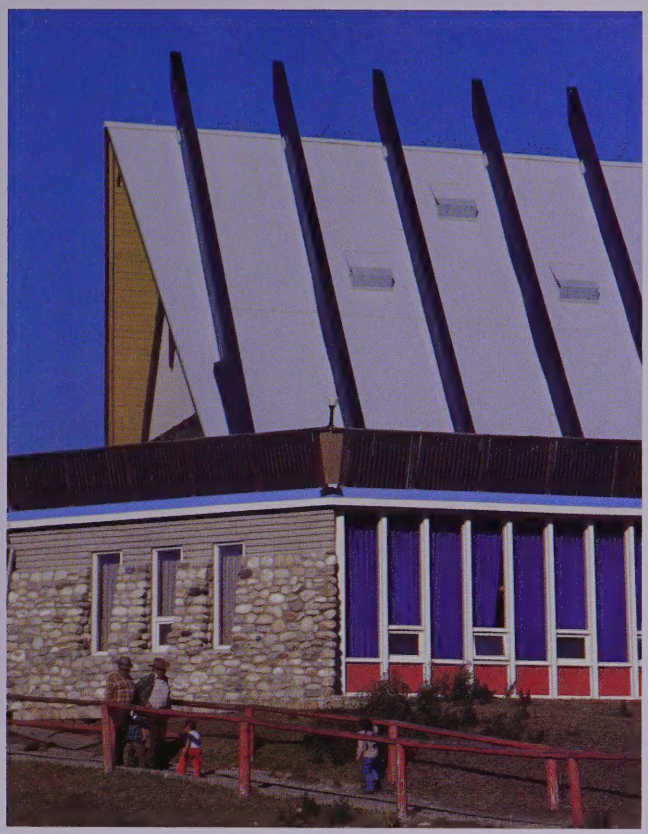
The band council issued a resolution and, some weeks later, a surrender referendum was held. A majority of band members agreed to surrender and lease a portion of their reserve land.

The agreement (as finally approved and put into effect) grants Wildlife Unlimited the use of 235.35 acres of the reserve for twenty-three years. The lease-rental fee is renegotiable at several periods over its duration. During the first three years Bailey pays the band $2,500.00 per year, or 5 per cent of the annual gross, whichever is greater. From there on there will be rental reviews to ensure that a fair market rent is obtained by the band.

At the end of the twenty-three year lease, the agreement with Wildlife Unlimited can be reviewed if both parties are agreeable. Another condition of the lease specifies that if at any time Wildlife Unlimited fails to meet its obligations to the Stoneys, the band can take over the operation of the game farm, or can contract with another organization to manage the sanctuary.

Chief John Snow and Mickey Bailey both agree that this particular surrender and lease agreement involved almost endless red tape. There were many times when the idea seemed entirely too complicated to ever work. On the other hand, much detail work was necessary to insure that both parties achieved an agreement they could live with. It was essential that the conditions to which Bailey agreed permitted him to make a reasonable profit, and it was equally essential that the conditions to which the Stoneys agreed permitted them to make a decent income while still retaining control of their land.

Both the Stoney Wilderness Centre and Wildlife Unlimited developments at Morley are unique applications of the Stoney philosophy to economic development on the band's reserve land. Neither would be in operation today had they not met the rigid tribal requirements that any business venture on reserve land must have as its prime purpose the protection of the environment and the protection of the Stoney culture.



A view of the Stoney Band Council offices

Mickey Bailey, owner of Wildlife Unlimited, howls with his wolf friends

Stoney guides take their paying guests on a horseback expedition into the rugged Rockies

We're trying to make enough revenue for ourselves where we don't have to go through a lot of red tape to get it.

Chief Jim MacGregor

Chief Jim MacGregor
Whitefish River Band, Espanola, Ontario

The people of the Whitefish River Band, whose reserve is located just north of Manitoulin Island in Northeastern Ontario, have a simple but comprehensive objective for the future: their hope is to generate enough income on the reserve to develop their own projects, improve employment conditions, and move closer to a full measure of economic independence.

When Chief Jim MacGregor took office some six years ago, economic development on the reserve was an on-again, off-again thing. Some development (in the form of a small sawmill and a cottage lot sub-division) had been undertaken but a precise and considered plan of action was in the discussion stage only. Chief MacGregor himself was employed off the reserve with International Nickel. But soon after his election, he decided that serving as chief was a full time position. He resigned his Inco job, gladly gave up commuting, and devoted his considerable energy to stimulating interest, planning for development and getting things moving. Working with the band council and with the band economic development committee, Chief MacGregor went to work organizing various projects that would conform to an overall development plan for reserve lands.

The first project was to consolidate and expand the existing cottage lot sub-division. In a plan almost identical to the Klahanie Estates development at Powell River, British Columbia, the Whitefish River people identified a portion of their Georgian Bay shoreline as ideal for lease to summer cottagers. The band commissioned a survey and some eighty lots, each 100 by 150 feet, were developed. A band council resolution to request a surrender referendum in order to lease these lots for twenty years passed, as did the referendum itself.

As with most negotiated conditional leases on reserve land, one of the conditions written into the agreement with the lessees involved re-assessment of the lease fees every five years. Any increase is to be based on the re-appraisal of the land value by an outside independent source.

The five-year clause is very important. When the band originally started to lease the lots, the annual rental was only $150.00 per lot per year. But the value of the land has increased and now the lots will fetch $450. each per year. Revenue from the project is deposited in the band's revenue account where it is re-cycled into improvements on the reserve, and into measures designed to stimulate more economic growth.

About the same time the cottage lots were being leased, an outside company approached the economic development committee with another interesting proposition. Canada Cement LaFarge needed a location for a cement storage and distribution plant. The company was interested particularly in acquiring a site that would provide good access by lake freighter and rail spur lines. These conditions were best met by a location on MacGregor Bay, a site within the Whitefish Reserve.

The company's proposal to the band was to lease 138 acres of reserve land and to erect an almost fully-automated distribution terminal. The proposal included clauses that would give first preference in employment to members of the Whitefish River Band, provided they were qualified.

The committee decided that the advantages outweighed the disadvantages. The rental income over the period of the lease would be a healthy injection into the band funds. New revenue would be generated, revenue that could be put toward other Indian-owned projects. Along with the revenue from the cottage lots, portions of the new money could be applied to the restoration of the sawmill business, and three

Lloyd MacGregor leaves for home after a day's work at the Canada Cement LaFarge plant on the Whitefish River Band Reserve

families could be supported by the positions opened to them by the presence of the terminal.

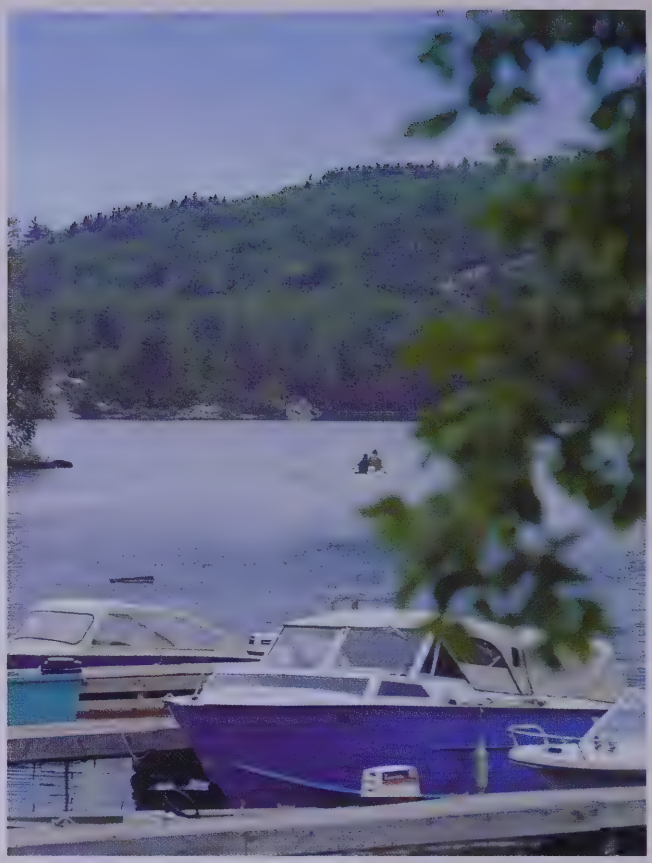
A presentation was made to the general band membership and a band council resolution for a surrender referendum was passed. The Canada Cement LaFarge lease at Whitefish is for twenty five years. The company has the option to renew for an additional five periods of five years each.

At Whitefish River, most of the band members were already familiar with the implications and the procedure for surrender. The majority voted in favour and a lease agreement with Canada Cement LaFarge was drawn up and signed.

"The plant opened in 1974 and the men who work there are never the ones you see at the band council office looking for welfare", says Jim MacGregor. In actual fact, all three had worked previously off the reserve. Now they can live and work on the reserve, see more of their families, and make good money, too. The number of jobs available at the plant is small, but the *kind* of work is more important than the number of jobs provided; the men who work at the Canada Cement plant are left largely on their own, they are almost totally responsible for the entire operation. They have been given responsibility for a large and costly plant and they have responded with pride; through them the whole band shares a sense of accomplishment.

From a straight dollars-and-cents viewpoint, the plant on MacGregor Bay makes a lot of sense. But it has caused some problems for the band in other ways. A lot of landowners in the area, non-Indian neighbours, complain that it destroys the view. They're afraid the shipping traffic will increase markedly. In some cases the presence of the plant has strained the band's relationship with some of its own cottage lessees. But even in this sense, some good has come out of it. "We're learning quite a bit about community relations and how to get along with our neighbours," says Jim MacGregor. (The more opportunity they have to communicate, the better the relationships become).

There's new life at the sawmill, too. As per the masterplan the additional rental revenues are helping to finance new equipment and improvements at the mill. And since this is a totally Indian-owned and operated organization, its growth, both in capacity and in an employment sense, is very important to the band. Now, new plans are being made to expand the mill and possibly to open a wholesale or retail operation to sell lumber to markets off the reserve.



Leased cottage lots overlook waters of MacGregor Bay

Inside re-activated sawmill a large log is prepared for cutting

If economic development plans include the use of reserve lands...then it is extremely important to have a lawyer.

Douglas R. Bouey

Douglas R. Bouey,
Lawyer, Calgary, Alberta

Over the years, there have been some unfortunate situations in which people have been carried away with enthusiasm for economic development projects that involved the use of Indian reserve land. These incidents are regrettable because they embitter the band or the tribe, because it further strains relations between Indian and non-Indian communities, and because a business failure means the loss of money—often big money. In these cases, the people involved have moved too far, too fast, without proper guidance and advice. The result has been, in some instances, loss of control over the project and/or the land; in others it has meant personal loss or the loss of band funds because proper precautions were ignored. In still other cases it has led to the development of economic projects that were unsuitable to the band or destructive of the environment.

Any or all of these mishaps could have been avoided and potential risk would have been minimized if the groups or band councils considering use of land, had first obtained the services of well qualified advisors. In particular, it's important to hire a lawyer who *knows* and *understands* Indian concerns; the lawyer should be an expert in the specific legislation and regulations that govern the use of Indian reserve land.

The band's lawyer must be completely familiar with federal legislation, such as the Indian Act and the British North America Act. He must also be in a position to advise you on provincial legislation and, if they apply, municipal by-laws.

Most important of all you can use him for advice on such important matters as:

- setting up a trust or a company to organize and manage the project,
- band control of such an organization (including how the shares are held),
- proper use of the land,
- ways and means of raising funds,
- taxation regulations and how such things as incorporation will affect the band and its members.

If you plan to use reserve land, he can help you arrange a *conditional* surrender of the land required with a lease-back to the organization you have set up. He will also know that in some cases, depending on the circumstances, a locatee lease or agricultural lease may be written without the need of a surrender procedure.

On the following pages you will find general information that deals on a step-by-step basis with the way to proceed with a surrender and lease for economic development. But again, readers are urged to *engage the services of a lawyer before they proceed too far with their* planning.

Procedure for Surrender and Land Leasing.

The preceeding pages of this book have shown, in general outline, how three Indian bands went about arranging the surrender and lease of portions of their reserve lands. But no two cases are identical; the problems faced on one reserve will be different than those on the next. Nonetheless, the procedures—the step-by-step routine by which the surrender and lease are accomplished—are essentially the same in all cases.

The surrender and lease of reserve land is governed by the terms of the Indian Act. The act contains 124 sections 47 of which relate to reserve lands; the Act is, for the layman a complex document—another good reason why a lawyer familiar with the Act is the band's best friend. These two pages present a condensed account of the steps to take when the band decides to surrender some of its land.

THE FIRST STEP

Before any action can take place, the band must be acquainted with the details of the surrender. A meeting or a series of meetings must be held at which argument for and against may be presented. To be effective and to truly represent the majority of the band, all members with strong feelings about the surrender must be encouraged to give voice to them. Free and open debate is the only way in which a consensus can be reached.

When the band members have agreed on a course of action the band council must draft a preliminary resolution which sets out all details of the proposed surrender for lease. The resolution must be accompanied by a letter of application from the prospective lessee. In addition, a legal description of the land involved must be included; usually this means the band or (more probably) the prospective lessee must have the site surveyed after receiving instructions from the Surveyor General of Canada, and a copy of the survey plan, together with a written description, must be attached to the band council resolution.

The resolution and accompanying documents are submitted to the regional headquarters for forwarding to the Department of Indian Affairs, where the band land records are checked to ensure that there are no existing rights belonging to either band members or non-Indians affected by the surrender proposal.

THE SECOND STEP

When departmental approval for the preliminary resolution is received, the band council must compile a list of electors and post it prominently on the reserve. The voter's list must be accompanied by a Notice of Intent which gives the date time and place at which the surrender will be put to a vote.

The council should prepare a "document of information" which sets forth all details of the proposed surrender. This document should be reproduced in quantities large enough to ensure that every elector of the band can have his or her own copy.

Now, the vote must be held at the date and time previously established. At the meeting, the presiding officer (the chief or band electoral officer) must read the full text of the surrender document. It is important to realize that to go forward, a vote to surrender, must be assented to by a majority of the electors of the band, in accordance with the Indian Act. This means that a majority of the electors of a band must give assent to the surrender at a "first" meeting before it can be forwarded for acceptance by the Governor in Council. However, if less than a majority of the electors vote on the surrender but a majority of those voting vote in favour, the chief and council may request that a "second" meeting be called by the Minister. At a "second" meeting a vote in favour by a majority of those voting will give assent. It is obvious, then, that the preliminary meetings and the "document of information" be as widely publicized and studied as possible: a poorly attended surrender meeting could mean that a second vote must be held.

THE THIRD STEP

If a majority of the electors approve the surrender, the council must prepare and collect a number of documents. These documents include: the band council's resolution giving the

description of the land, the surrender proposal, terms and conditions; three completed copies of the Assent to Surrender document; affidavits of the chief and district supervisor or district manager; a completed and signed list of electors; an affidavit signed by the chief and departmental officer present that the ballot boxes used were inspected and found empty prior to the surrender vote, if a secret ballot was undertaken. Also required is an affidavit from the chief as to the results of the vote, as well as a similar statement from the departmental officer present.*

A full list of the documents can be obtained from the regional offices of the department. (Once more, it is emphasized that in the presence of so many resolutions, claims, quit claims and the like, the early advice of the departmental land officer is the band's best assurance of keeping red tape to a manageable level.) All documents, survey plans, and so forth must be submitted to the department for approval, through the regional office headquarters, where the surrender is submitted to the Governor-in-Council. This approval signifies the point at which the lease can be finalized and the economic development begins in earnest.

BEFORE YOU BEGIN

As has been stated earlier, the procedure to surrender Indian lands is complicated—"full of red tape"—is the way many bands describe it. While it may not be immediately apparent, there is one very important reason for the complexity: at every step along the way to surrender, the band and the Department of Indian Affairs is made to stop, consider again the whole proposition, and decide whether it all adds up to a positive movement that will benefit each individual Indian, the band, and the larger community of Indians in Canada. Red tape? Yes, it is. But red tape for a very practical reason—to prevent a hasty decision which could adversely affect the future.

Elsewhere in this book it has been suggested the services of a legal counsel are invaluable to a band considering surrender of part of its land. That is true for at least two reasons. First, the department considers that Indian's rights are best protected when an uninvolved third party enters the negotiations. Second, a lawyer working for the band will move faster to process the application with a thorough knowledge of the legal issues involved.

This is not to say that the band *must* hire a lawyer. Not at all. Regional offices of the department and the district itself are more then prepared to lend assistance and advice. Experience has shown, however, that applications for which the band has had the advice of legal experts clear departmental checks in less time.

It is important for the band, and especially the council, to understand the various kinds of surrender.

A surrender may be "Absolute" or "Qualified", "Conditional" or "Unconditional". An "Absolute" surrender is a surrender to the Crown with no qualifications or conditions. The Crown may lease or sell lands surrendered in order to obtain maximum benefits for the Indians concerned. A "Qualified" surrender is a surrender for sale or lease for a particular purpose or for a specified term or with other similar qualifications. A "Qualified" surrender may be conditional. Payment of compensation to those dispossessed band members *might be one of the conditions* of a surrender, as might be the return of land to reserve status on termination of a lease.

* Alternative to a general meeting called by the council, at which the vote may be open or by secret ballot, the council may request that the Minister call a referendum in accordance with the Indian Act.

..so it doesn't really matter whether a borrower is an Indian or a non-Indian...

Eric Harwood

Eric Harwood, Bank Manager,
Powell River, British Columbia

"Talking about the difference between an Indian and a white man . . . as far as I'm concerned there isn't any. There are those of us who can run a business and those of us who can't. Some Indians are far more ready to do my job than I am. Yet there are others who just can't cope. We're all just people and it depends on the individual."

"What *does* matter is the use to which the individual wants to put the money and whether that venture will produce enough income to cover the payment of interest." These are the words of Eric Harwood, the manager at the Bank of Montreal at Powell River, British Columbia. For the most part all bank managers are willing to listen to a comprehensively planned business proposition. After all, banks make their money by loaning money to clients. Their main concern is that the funds loaned will be paid back at the agreed rate of interest, and that the loan is well protected with collateral.

Local banks in smaller centres are often limited in the amounts of money they can lend to small businesses. If your business proposition requires a lot of complicated financing, then your local bank manager will have to take it up with his superiors at his bank's regional headquarters and you probably will have to supply more presentation information. None-the-less, it is always best to work through your lawyer or business consultant and approach these conventional lending sources first.

If your project is not sufficiently well-secured for conventional bank financing, then you can turn to the Indian Economic Development Fund for assistance. Through this fund, the Department of Indian Affairs can assist you with guaranteed loans at the bank, or grants or contributions to provide you with start-up costs. For full information about the I.E.D.F. program, contact your district or regional Indian Affairs economic development officer.

Other ways... Other means.

It should be clear by now to the reader that the surrender of Indian land for economic development projects is both an emotional and complex procedure. The combination of those two facts has been sufficient in a number of cases to discourage band members when the issue was put to a vote. If the band cannot agree to surrender, all is not lost: there *are* alternatives that do not involve surrender.

One such alternative is the situation in which a band member—say a mechanic who wants to open a garage servicing cars for both Indian and non-Indian customers—asks permission to use a specified part of the reserve land. Permission can be granted by approval of the band council; in complicated instances, or when such a request may provoke dissention, the council may call for a vote. In neither case is surrender necessary, nor is ministerial or departmental approval required.

Two or more band members can align themselves in a partnership and seek to use part of the reserve without resorting to the surrender process. However, should a band member form a partnership with a person who is not a band member, surrender is required before they can operate on the reserve.

Similarly, if the band (or several members of the band) incorporates a company to run and administer a land based project, a surrender should be obtained even though the company is owned and controlled by band members. The reason for this is not difficult to understand. Incorporation—the process by which a group or an individual declares itself a limited liability company—is a legal process. Once a company has been incorporated it (and its officers) must observe the requirements of the legislation used as the basis of incorporation. In other words, the company can be sued—and, in turn, can sue others; it can be subject to taxation and so on. It's a curious situation, particularly as it applies to wholly-Indian incorporated companies. A band member can serve as president of the band corporation and be paid a regular salary; the salary, as for all monies earned on the reserve is free from taxation. The company, however, will be taxed on its profits.

When Indians form a company to operate and administer a land based project the Department of Indian Affairs *prefers* that it be a limited liability company. The emphasis is not on the word "prefer": there is no compulsion to incorporate but there exists a very strong departmental feeling that all involved are better protected with a limited company. This is particularly true when a significant sum of money is involved.

A limited liability company is just what is says it is—the company and its officers are responsible for the company's legal debt only to a limit set forth in the papers of incorporation. If the company is sued for damages, the extent of any court settlement will be determined by the amount of capitalization of the firm.

To take an example: suppose that, after discussion, the band council and a majority of the voting members decide to build and run a motel on reserve land which fronts a busy highway. The business could be operated by a band partnership but in this instance, the band decides to incorporate. The first step is to file the papers of incorporation; this is best done by a lawyer who thoroughly understands corporate law.

After the papers have been filed and incorporation granted, the band must look for financing. Suppose the band has a sizeable balance of its own. Using the funds as collateral, the band corporation can raise, say, $50,000. from a nearby bank. During construction of the motel, a young non-Indian construction worker is run over by a bulldozer; he is left permanently crippled and sues the motel corporation for $150,000. Sue he may, but he cannot collect more than the worth of the company—$50,000.—which represents the cash reserves and physical assets such as the motel building.

In addition, none of the company officers—the chairman, president and so on—can be personally sued for the balance. That is to say that none of the assets owned by officers of the company can be seized to pay for the corporation's debt. Without the protection of a limited liability company, personal effects may be seized to pay off debts. Thus a car, a snowmobile, a pick-up truck or anything owned by one of the proprietors in a non-incorporated company could be seized through a legal process in the event of bankruptcy.

Under such circumstances it is not difficult to see why the department prefers reserve companies, formed to pursue economic development, be of the limited liability kind.

In any business venture anywhere, whether land is used or not, there is always risk involved.

Stoney men play bone game

At Morley, Alberta, one of the most absorbing and involving pastimes is the ancient bone game. Played with small marked bones and much skill, the game illustrates the point that the use of land for economic development is not necessarily a gamble–but there is risk involved.

When you are considering economic development it is essential to identify that risk; then to decide if you can live with it or not. It's like driving with a bald tire–you're reasonably safe if you proceed with caution.

Ask yourself these questions and repeat them frequently: Is the plan a good one? Will it make money? Will it benefit *everyone* on the reserve? What conditions should be written into the lease to guarantee that control of the land is retained, or comes back to the band after the lease period is over?

Good competent advice is available from experienced Indian leaders, outside business and financial consultants, the department and your own legal counsel.

In sum, the important point to make sure of is . . . that the band retains control.

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Hon. Judd Buchanan, PC, MP.,
Minister of Indian and Northern Affairs*

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